IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-09-2006

CORAM

THE HONOURABLE MR. JUSTICE D. MURUGESAN
AND
THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT APPEAL Nos.2191 to 2193 of 2003, 1508, 1576, 1561 and 1427 of 2000 and
WAMP Nos.3119 and 3121 of 2003 and 2722 of 2000

S. Alamelu .. Appellant in W.A.No.2191/03
S. Santhanam .. Appellant in W.A.No.2192/03
M. Padmavathy .. Appellant in W.A.No.2193/03
Vijaya Kumari .. Appellant in W.A.No.1508/00
V.M. Harikrishnan .. Appellant in W.A.No.1576/00
Shantha Kumari .. Appellant in W.A.No.1561/00
K. Abhirami .. Appellant in W.A.No.1427/03

Vs.

1.Govt. of Tamil Nadu, rep., by
its Secretary,
Industries Department,
Fort St. George,
Chennai-600 009. .. Respondent 1 in all W.As

2.The Special Tahsildar (L.A.),
SIPCOT, Sriperumbudur Scheme,
Unit IV, Sriperumbudur,
Kancheepuram District. .. Respondents 2 in W.A.2191/2003

The Special Tahsildar (L.A.),
SIPCOT, Sriperumbudur Scheme,
Unit V, Sriperumbudur,
Kancheepuram District. .. Second Respondent in W.A.2192/2003, 2193/2003, 1508, 1576, 1561 and 1427 of 2000

Writ Appeals filed under Clause 15 of the Letters patent Appeal against the order of this Court dated 19.4.1999 made in W.P.1190 of 1998, 1194/98, 1188/98 1192/98, 1191/98, 1189/98 and 1193 of 1998 respectively on the file of this Court under Article 226 of the

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Constitution of India to issue a writ of certiorari calling for the records on the file of the respondent relating to the section 4 (1) Notification published on 25.9.97 in the Tamil Nadu Government Gazette extra ordinary part II Section 2 in G.O.Ms.254 Industries (MID II) dated 24.9.1997 and Section 6 declaration published on 13.11.1997 in the Tamil Nadu Government Gazette Extra Ordinary Part II Section 2 in G.O.Ms.No.312 Industrial MID (II) dated 12.11.97 relating to survey No.475/2A in the Sub divided patta Survey No. 475/16, measuring 6233 sq.ft. In 157 Pondur Village, Sriperumbudur Taluk, Kancheepuram District (W.A.No.2191 of 2003 in W.P.1190/98)

2. relating to survey No.475/3B and as per the sub divided patta Survey No. 475/14, measuring 2400 Sq.Ft. in 157, Pondur Village Sriperumbudur Taluk, Kancheepuram District (W.A.2192/2003 in W.P.1194/98)

3. relating to Survey Nos.475/2B, 475/2A, 475/2C1, 475/7, 475/3B, 473/8, 475/3A and as per the sub divided patta the Survey No. 475/2A3, measuring 3850 Sq.Ft. in 157, Pondur Village Sriperumbudur Taluk, Kancheepuram District (W.A.2193/2003 in W.P.1188/98)

4. Patta the Survey No. 475/2A5, measuring 4800 Sq.Ft. in 157, Pondur Village Sriperumbudur Taluk, Kancheepuram District and another Survey Nos.475/3A, 475/3B measuring 2400 Sq.ft in 157 Pondur Village Sriperumbudur taluk, Kancheepuram District (W.A.1508/2000 in W.P.1192/98)

5. relating to Survey Nos.475/2B, 475/2A, 475/2C1. 475/7, 475/3B, 473/8, 475/3A and as per the sub divided patta Survey No. 475/2A10 measuring 2400 Sq.Ft. in 157, Pondur Village Sriperumbudur Taluk, Kancheepuram District (W.A.1576/2000 in W.P.1191/98)

6. relating to Survey Nos.475/2B, 475/2C1, 475/7, 475/3B, 473/8, 475/3A and as per the sub divided patta Survey No. 475/2A4 measuring 4296 Sq.Ft. in 157, Pondur Village Sriperumbudur Taluk, Kancheepuram District (W.A.1561/2000 in W.P.1189/98)

7. relating to Survey Nos.475/2B, 475/2A, 475/2C1. 475/7, 475/3B, 473/8, 475/3A and as per the sub divided patta the Survey No. 475/2A9 measuring 2400 Sq.Ft. in 157, Pondur Village Sriperumbudur Taluk, Kancheepuram District (W.A.1427/2000 in W.P.1193/98) respectively.

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For Appellant in
all the Appeals : Mr.David Tyagarajan

For Respondents-
1 and 2 in
all the Appeals : Mr.C.Thirumaran,
Government Advocate.

COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY D.MURUGESAN, J.)

The unsuccessful writ petitioners are the appellants. The appellants are the owners of the lands which were acquired by the respondent-State for establishment of an industrial complex viz., SIPCOT. The proposal was initiated in G.O.Ms.No.134 dated 6.6.1995 to acquire an extent of 300 acres for SIPCOT industrial purpose with several multinational companies, non-resident Indians and local entrepreneurs evincing keen interest in investing in Tamil Nadu, especially near Madras. As it was felt that the said extent of 300 acres may not be sufficient, the Government issued subsequent G.O.Ms.No.248 Industries (MIG.2) Department dated 27.10.1995 proposing acquisition for 1400 acres. Later on in G.O.Ms.No.61 Industries (MID-II) Department, dated 24.2.1997, the Government accepted the proposal for acquisition of land to an extent of 935.52.0 hectares of land approximately 2300 acres, including patta and poromboke lands. By the above Government Orders, it was also indicated that the acquisition must be made invoking emergency clause under the Land Acquisition Act, 1894 (hereinafter called as the 'Act').

2. In terms of the above Government Orders, notification under Section 4(1) was issued and declaration under Section 6 was published in the Government Gazette on 13.11.1997. For completion of facts, it must also be mentioned that the possession of the lands was taken and the same was handed over to SIPCOT on 9.1.1998. The appellants had approached this Court questioning the acquisition proceedings, by way of filing writ petitions some time during February, 1998 after the Award was passed and possession was taken. The challenge to the acquisition proceedings was basically on the following grounds viz., (i) that the lands were purchased by the appellants much prior to the Section 4(1) notification and their names were found in the revenue records, but nevertheless, their names did not find a place in the notification under Section 4(1); (ii) that there was a total non-application of mind on the part of the respondents to invoke the emergency provision; and (iii) that

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the lands in question were approved plots by the Government in the year 1995 itself before Section 4(1) notification. All the above contentions were rejected by the learned single Judge and for the same reasons, the writ petitions were dismissed. Hence the present appeals.

3. Mr.David Tyagarajan, learned counsel appearing for the appellants raised the following points:-

> i) Inasmuch as the respondents have invoked the emergency clause under Section 17(4) of the Land Acquisition Act for the purpose of SIPCOT, a Corporation, they ought to have followed the procedure enumerated under Part VII of the Land Acquisition Act relating to the acquisition of land for companies. He fairly submitted that this point was not raised before the learned single Judge and being a question of law, he may be permitted to raise this contention. According to the learned counsel, inasmuch as the valuable right on the property has been deprived in view of the dispensation of the enquiry under Section 5-A, the procedure enumerated under the provisions of the Land Acquisition Act shall be strictly followed. In the absence of the same, the entire land acquisition proceedings are liable to be quashed.
>
> ii) Secondly, he would contend that even before Section 4(1) notification was published, the names of the appellants were found in the revenue records and non inclusion of their names in the Section 4(1) notification would vitiate the land acquisition proceedings.
>
> iii) Thirdly, the learned counsel submitted that inasmuch as the authorities are empowered to invoke the emergency clause, they should have applied their mind as to whether such clause could be invoked or not while bypassing the usual procedure in conducting final enquiry. In the absence of application of mind, the entire land acquisition proceedings are liable to be quashed.
>
> iv) Lastly, the learned counsel submitted that the lands are approved layouts and such lands cannot be acquired in view of the G.O.Ms.No.2135 Revenue dated 24.9.1997.

4. On the other hand, Mr.C.Thirumuaran, learned Government Advocate would submit that the acquisition is for the purpose of the

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SIPCOT, a Corporation, which is managed and controlled by the State Government and thus the provisions of Part VII are not applicable. In so far as the contention as to the non inclusion of the names of the appellants, learned Government Advocate would submit that at the time of the proposals were forwarded, the appellants were not the owners and they are the subsequent purchasers, but of course, prior to Section 4(1) notification. As the Section 4(1) notification was issued only on the basis of the acceptance of proposals, their names were not included. Moreover, as the emergency clause was invoked dispensing with the 5-A enquiry, non mentioning of the names of the appellants in the Section 4(1) notification will not make any difference and, consequently, will not vitiate the acquisition proceedings. In so far as the third contention as to the non-application of mind, the learned Government Advocate brought to our notice the finding of the learned single Judge, after perusal of records, that there was proper application of mind. Lastly, the learned Government Advocate submitted that G.O.Ms.No.2135 Revenue dated 24.9.1997 is only a guideline and has no statutory force and, therefore, the learned Government Advocate submitted that the contentions of the learned counsel for the appellants are liable to be rejected.

5. Point No.1:-Though the appellants did not raise the issue as to whether the acquisition proceedings are vitiated as the respondents did not follow the procedure contemplated under Part VII of the Land Acquisition Act and consequently, there was no decision on the same, in view of the said legal contention we propose to examine the same. In UNION OF INDIA AND OTHERS vs. MUKESH HANS ETC. ETC. (2004 (2) LACC 424), the Apex Court has held that the provisions of Section 17(4) dispensing with the enquiry under Section 5-A is only an exception to the normal mode of acquisition contemplated under the Act and mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17 (4), that by itself is not sufficient to direct the dispensation of 5-A inquiry. As to whether the respondents have followed the procedure under Part VII of the Act for the purpose of acquisition, the relevant provisions of the Land Acquisition Act can be usefully referred to:-

> "Section 3(cc): The expression "Corporation owned or controlled by the State" means any body corporate established by or under a Central, Provincial or State Act, and includes a Government Company as defined in Section 617 of the Companies Act, 1956 (I of 1956), a society registered under the Societies Registration Act, 1860 (XXI of 1860) or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a co-operative society within the

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meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty one per centum of the paid up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments."

Section 3 (e): The expression "company" means ---

(i) a company as defined in Section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc);

(ii) a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc);

Section 6. Declaration that land is required for a public purpose.--- (1) Subject to the provisions of Part VII of this Act .. ..

.. ..

.. ..

.. ..

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1.-- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.-- Where the compensation to be awarded for such property is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

Section 17. Special powers in cases of urgency.-- (4) In the case of any land to

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which, in the opinion of the (appropriate Government), the provisions of sub-section (1) or sub-section (2) are applicable, the (appropriate Government) may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time (after the date of the publication of the notification) under Section 4, sub-Section (1).

Part VII – Section 38-A. Industrial concern to be deemed Company for certain purposes.-- An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in (Sections 4,5-A, 6, 7 and 50) shall be interpreted as references also to such concern).

Proviso to Section 6 of the Act contemplates that no declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority. By Explanation No.2, it is explained that where the compensation to be awarded for such property is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

6. Section 3(e) of the Act defines a 'Company' as meaning, a company as defined in Section 3 of the Companies Act, 1956, other than a Government Company referred to clause (cc). By that definition, the Government Company referred to in clause (cc) cannot be considered to be a company for the purpose of Part VII. Section 3 (cc) relates to the expression "Corporation owned or controlled by the State includes a Government Company as defined in Section 617 of the Companies Act, 1956.

7. The contention of the learned Government Advocate is that as the acquisition is for the purpose of SIPCOT, a corporation owned or controlled by the State Government, it can be brought within the definition of Section 3(cc) and excluded by Section 3(e) of the Act.

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8. On the other hand, the application S.17(4) of Part VII relates to an industrial concern which is ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and that Section, in our considered view, would not be applicable to a Government Company or a Corporation. In fact, the said Part VII relates to acquisition of lands for the Companies enumerated under Section 38-A and not otherwise. In that view of the matter, we are not impressed on the contention of the learned counsel appearing for the appellants in respect of the non compliance of procedure under Part VII of the Act, accordingly we reject the same.

9. Point No.2: There is no dispute that the names of the appellants were found in the revenue records even before Section 4 (1) notification was issued and, admittedly, their names were not mentioned when the proposals were forwarded in the year 1995, as precisely the proposal was started in G.O.Ms.No.134 dated 6.6.1995 and later on the subsequent Government Order was passed in G.O.Ms.No.248 dated 27.10.1995 and G.O.Ms.No.61 dated 24.2.1996. The challenge as to the non inclusion of the names of the appellants in 4(1) notification is liable to be rejected mainly on the following two grounds:-

(i) Firstly, when the emergency provisions are invoked, dispensing with the enquiry under Section 5-A, non inclusion of names of the land owners in 4(1) notification may not have any bearing on the validity of the acquisition proceedings so long as they are given opportunity to participate in the award enquiry. This position in law is well settled. In the event the emergency provisions are invoked, the land owners are entitled for a reasonable compensation for acquisition of the lands and for that purpose, they are entitled to be heard in the award enquiry. Hence, non inclusion of their names by itself shall not vitiate acquisition proceedings.

(ii) Secondly, when the proposals are forwarded to the Government, the entire records relating to the lands including survey nos., extent and the names of the owners are also forwarded to the Government for their consideration. Admittedly on the date when the proposals were sent, the names of the appellants were not found in the revenue records and for the said reason, the names were not included in the proposals. When once the proposals are

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approved by the Government, the same are not again referred to the acquisition officers for further verification as to the survey numbers, extent of land and the names of the owners. Section 4(1) notification is prepared and issued on the basis of the details contained in the proposal. Of course, if the land acquisition officers could have verified the names of the owners after obtaining the approval of the proposals, and it would have been a fair procedure to avoid any challenge on the ground of non inclusion of names. But, in our considered view, a reasonable inference could be drawn as to the bona fide of the respondents in publishing Section 4(1) notification as per the details contained in the proposals approved by the Government.

10. Point No.3:-In so far as the challenge to the acquisition proceedings on the ground of non application of mind, our attention was drawn by the learned Government Advocate to the paragraph Nos.28,29 and 30 of the order of the learned single Judge. The learned Judge has found factually that the respondent-State has applied their mind before the proposals were accepted after perusing the files. That apart, the learned counsel for the appellants submitted that the Government Order relates to the lands belonging to the appellants for issue of notification in G.O.Ms.No.256 dated 24.9.1997. While applying the mind to the emergency clause, the Government had relied upon only G.O.Ms.No.61 dated 24.2.1997, which Government Order is not applicable to the cases on hand. However, our attention was drawn by the learned Government Advocate that the proposals were initially considered by the Government in G.O.Ms.No.134 dated 6.6.1995 and thereafter, only G.O.Ms.No.248 dated 27.10.1995 and lastly, for an extent of nearly 2300 hectares in G.O.Ms.No.61 dated 24.2.1997. The application of mind is not only in respect of the patta lands but also for the poromboke lands. The said Government Order relates to the entire extent of land including the land belonging to the appellants notified in G.O.Ms.No.256 dated 24.9.1997.

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11. In view of the above, we are not inclined to accept the contention of the learned counsel for the appellants. However, he relied upon the judgment of the Supreme Court reported in Mukesh Han's case (cited supra). It is true that the Apex Court has held that before an emergency clause is invoked, it requires an opinion be formed by the Government that along with the existence of such urgency or unforeseen emergency, there is also a need for dispensing with 5-A enquiry. The said judgment is not applicable to the facts of these cases, as we have found that the respondent-State had

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applied their mind to the acceptance of the proposal for acquisition and the consequential decision to dispense with 5-A enquiry is in conformity with the law laid down by the Apex Court. The learned counsel for appellant has also relied upon another judgment of a Division Bench of this Court in CHINNAMMA AND OTHERS vs. STATE OF TAMIL NADU AND ANOTHER (AIR 1986 Madras 55) on the same line. As we have factually found that there was application of mind at the instance of the State government, the decision cannot be made applicable to the facts of these cases.

12. Point No.4:-So far as the last contention is concerned, the learned counsel for the appellants would rely upon the judgment of this Court reported in SOMASEKAR AND ANOTHER vs. STATE OF TAMIL NADU AND OTHERS (2000 Writ L.R. 231) for the proposition that G.O.Ms.No.837 Housing dated 15.6.1976 excluded certain categories of lands from acquisition. One such category was in respect of all areas covered by layouts approved by Director of Town and Country Planning. Learned counsel submitted that the lands covered under the acquisition proceedings have been approved by the Government in the year 1995 itself and therefore, in view of the said Government Order, those lands are excluded. We are not in agreement with the said submission. Firstly, the said Government Order is only an administrative instruction and utmost can be called as guidelines. Even in the case referred to above by the learned counsel for the appellants, though the learned Judge has referred to the above Government Order, ultimately, did not accept the contention, as could be seen from paragraph-42 in point No.2 of the said order, where the learned Judge has held that the Government Order will be helpful to screen applications and would not enjoin any responsibility on the second respondent nor would it create any right in the land owners since the said guidelines were only an exercise of discretion. In fact, a similar question came up for consideration before the Apex Court in the judgment in STATE OF TAMIL NADU AND ANOTHER vs. MAHALAKSHMI AMMAL AND OTHERS ((1996) 7 SCC 269). In that case, the Supreme Court was considering G.O.Ms.No.583 dated 11.3.1983. In fact, the Government Order in G.O.Ms.No.837 dated 15.6.1976 and subsequent similar Government Order in G.O.Ms.No.413 Housing and Urban Development Department dated 3.3.1979 and one more G.O. in G.O.Ms.No.57 Housing and Urban Development dt.12.1.1980 excluding certain lands came up for consideration before the apex Court and ultimately the apex Court found that those Government Orders have been subsequently withdrawn vide G.O.Ms.No.583 dated 11.3.1983. Moreover, the above Government Orders relate to the exclusion of plots earmarked for residential purpose for acquisition and allotment of the same for others for housing purpose. In our opinion, those exclusions are applicable only in case of acquisition for housing schemes and not to one in the present cases that the acquisition of lands for industrial purpose.

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13. In COLLECTOR, ONGOLE vs. NARRA VENKATESWARLU ((1996) 7 SCC 150), the apex Court did not accept a similar challenge on the basis of the G.O., incorporating the power on the authority where the compensation amount was Rs.20,000/- and above. The contention was repelled on the ground that it was only an administrative instruction and cannot have any statutory force to challenge the land acquisition proceedings.

14. On all the above reasons, we are of the considered view that there are no merits in the writ appeals and the same are dismissed. No costs. Consequently, connected WAMPs are also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

Svn

To

1. The Secretary,
Government of Tamilnadu,
Industries Department,
Fort St. George, Chennai-9.

2. The Special Tahsildar (LA)
SIPCOT, Sriperumbudur Scheme,
Unit IV, Sriperumbudur,
Kancheepuram District.

3. The Special Tahsildar (LA)
SIPCOT, Sriperumbudur
Scheme, Unit V, Sriperumbudur,
Kancheepuram District.

1 cc to the Government Pleader, Sr. 41079

W.A.Nos. 2191 to 2193 of 2003, 1508, 1576, 1561 and 1427 of 2000

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